IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4050 OF 2006

Abhijeet Rajaram Mane ..Petitioner

Vs.

Ajitrao Shankarrao Ghorpade & Ors. ..Respondents

Mr.Amit Sale for the petitioner

Mr.A.R.S.Baxi for respondent nos.1, 3 to 5, 7 to 9

CORAM : A.P.DESHPANDE, J

DATED : 1ST DECEMBER, 2006

P.C.:

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The father of the petitioner had executed an agreement of sale of the suit land in favour of plaintiff nos.1 to 9. The agreement is dated 18.4.1994. The plaintiffs instituted a Special Civil Suit no.380 of 1997 in the court of Civil Judge, Senior Division, Sangli by contending that the defendant no.1 though obliged to execute a sale

deed, has failed to execute the same and hence, prayed for a decree for specific performance of contract. The agreement does not disclose that the defendant no.1 had acted as a Karta of the Joint Family. In this fact situation, the present petitioner who is the son of defendant no.1 filed an application under Order 1 Rule 10 of the C.P.C. to implead him as party defendant in the said suit. The contention of the present petitioner is that the agreement has been entered into by defendant no.1 in respect of property wherein the petitioner has a share by birth and thus, it is further contended that the defendant no.1 could not have deprived the present petitioner of his share in the property. The petitioner proposes to raise a plea that the agreement of sale was not executed for legal necessity. All these are the issues which will be required to be tried in the suit. The application made by the petitioner for impleading him as party defendant has been rejected by the trial court by placing reliance on the judgement of this court in the case of reported in 1995(1) Mh.L.J.893 between Shamrao Rajeshwarrao Potdukhe v/s Gurukul Gruha Nirman Bhadekaru Malki Sahakari

Sanstha Maryadit, Chandrapur and others. The observation which are relied upon reads thus:

> "A suit for specific performance is always limited to the agreement of which specific performance is sought and the court is required to examine and consider only those pleas that can either defeat or lead to its enforcement or seek in substituting the reliefs.

3. In the said judgment, the learned single Judge has emphasised that in a suit for specific performance, only those pleas can be raised which can either defeat or lead to its enforcement or seek in substituting the reliefs. Obviously, a stranger to the agreement cannot be permitted to be impleaded as party defendant. Nonetheless, in the present case, as the petitioner who claims to have a share in the property by birth, according to personal law, will not be a stranger to the agreement, in as much as he would be making pleas to defeat the agreement or atleast seek in substituting the reliefs, by restricting it to the

share of the defendant no.1. The learned trial court has not properly appreciated the ratio laid down by this court in the above referred judgment.

4. The trial court then proceeded to hold that the defendant no.1 is a Karta of the joint family and that the karta of the joint family has got every right to enter into an agreement of sale of the ancestral property for legal necessity. Here again the statement of law is incomplete and is not accurate. In the first place, the burden to establish that the property was transferred for legal necessity, would lie on the purchaser and secondly, it is not established that the transaction entered into by defendant no.1 in favour of plaintiff no.1 to 9 was in the capacity of Karta. The present petitioner who is the son of defendant no.1 would be in a position to press in service, the plea that the agreement of sale was not executed for legal necessity.

5. Taking overall view of the matter, it is apparent that the present petitioner who was the applicant before the trial court, need to be

permitted to be impleaded as defendant with a view to have complete adjudication of the dispute involved in the suit. If the present petitioner is impleaded as party defendant, the plaintiffs will not be prejudiced in any manner, on the contrary, the issue can be thrashed out once for all in this very suit. As I am of the view that the trial court has committed patent illegality in rejecting the application moved by the petitioner, the impugned order deserves to be quashed and set aside. I am also of the view that non-impleadment of the petitioner may lead to miscarriage of Justice.

6. In the result, writ petition is allowed. Impugned order is quashed and set aside. Application made by the petitioner under Order 1 Rule 10 of the C.P.C.stands allowed. The plaintiffs are directed to implead the present petitioner as party defendant and the suit shall thereafter proceed in accordance with law. Rule made absolute in above terms with no order as to costs.

(SHRI A.P.DESHPANDE, J)